IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7858 OF 2007

Nhava Sheva Port and General
Workers Union ..Petitioner

Vs.

Konkan Railway Corporation Limited
and anr. ..Respondents

Mr. Jaiprakash Sawant for petitioner.
Ms. Kiran Bagalia i/by Ms. Asha Bhambwani for respondent no.1.

CORAM: B.H. MARLAPALLE, J.

Date : December 18, 2007.

P.C.:

1. Heard Mr. Sawant the learned counsel for the petitioner. The petitioner-Union is aggrieved by the award passed by the Central Government Industrial Tribunal on 4/1/2007 thereby dismissing Reference No.CGIT-56 of 2003. The following demand was referred for adjudication by the Central Government under Section 10(1) of the Industrial Disputes Act, 1947.

"Whether the action of the management of

Konkan Railway Corporation Limited, in reducing the pay scale from Rs.950-1500 to Rs.750-940 w.e.f. 1/7/96 of Shri Deepraj D. Kerkar, Khalasi (Mech.) is legal and justified? If not, what relief the applicant concerned is entitled to and from which date?"

2. Before the Labour Court the Union filed a statement of claim and the first party employer filed Written Statement and opposed the demand on various grounds. The Union claimed that the workman concerned i.e. Deepraj D. Kerkar was never subjected to any medical examination, he was not declared unfit for a job of a driver and the first party had acted illegally and arbitrarily in reducing the payscale. The first party employer contended before the Labour Court in its Written Statement filed on 7/1/2004 at Exh.-G that in normal course a group of workmen was subjected to medical examination and Shri Deepraj Kerkar was one of such employees. He was examined by a panel of doctors as constituted by the employer and he was found to be unfit to continue in the job of a driver and such unfitness report was given in respect of 38 workmen. The employer, therefore, addressed a

letter to the employee on 9/7/1996 and called upon him to give consent for an alternative job as a helper by way of rehabilitation. As per first party such a consent was furnished on 11/7/1996 by the workman.

3. Surprisingly, the workman concerned did not step in the witness box and on the contrary one Mr.Sawant who was at the relevant time Vice President of the Union, deposed in support of the reference. The documents like the letter dated 9/7/1996 issued to the workman and his consent dated 11/7/1996 were proved through the evidence of employer's officer. Nothing stopped the Union from examining the original claimant himself and he was the most competent witness to depose before the court whether the letter dated 9/7/1996 was received by him and whether in response thereto he had furnished his consent on 11/7/1996.

4. On the part of the first party employer the medical record was placed before the Tribunal. The Tribunal noted that the workman concerned was working as a driver in the payscale of Rs.950-1500 and he was placed in the lower scale after submitting his unconditional acceptance dated 11/7/1996. It was

claimed that the workman was not supplied copy of the medical papers and, therefore, the Tribunal called upon the employer to submit the same. When the medical papers were placed before the Tribunal, it was noted that as per Officer Order No.07/1995 (Exh.C) in all 49 workmen were subjected to medical examination by the Chief Medical Officer who submitted his report vide Exh.D and in the said report the name of Mr. Kerkar was at Sr.No.35 and he was shown to be unfit for category A3 and B1 but fit for C1 and below. The employer in its evidence brought out that the workman concerned was declared unfit for the post of driver and he did not challenge the opinion given by the Chief Medical Officer. The Tribunal, therefore, accepted the said report as well as the unconditional acceptance of appointment in a lower scale. The Union for the first time raised an objection on 18/7/2001 i.e. almost after five years from the date of rehabilitation. The Tribunal noted that it was a case where the workman himself had accepted voluntarily the lower post and he had no right to allege that the action of the employer was arbitrary or illegal. Had there been no acceptance in writing by the workman for the post of lower pay scale, the situation would have

been otherwise and he would not have slept over for a long period of five years, if the action of the management was arbitrary or illegal. The Industrial Tribunal, therefore, found that the demand made by the Union was devoid of merits and there were no procedural infirmities in the rehabilitation of the workman when he was found to be medically unfit for the post of driver and while he was sought to be rehabilitated.

5. Hence, this petition must fail at the threshold and the same is hereby rejected summarily.

(B.H. Marlapalle,J.)